FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 511

OBJECTION TO MOTION OF CANADIAN SHIPOWNERS ASSOCIATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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No. .....

DEEP SEA TANKERS, LIMITED, in its own behalf, as owner of the s/t "RINCON HILLS", and as bailee of the cargo laden thereon, and SHELL OIL COMPANY, INCORPORATED, as charterer of said vessel,

Petitioners,

against

The steamtug "LONG BRANCH", the RAILWAY CARFLOATS NOS. 61 and 56, CENTRAL RAILROAD COMPANY OF NEW JERSEY, the steamtugs "AJAX" and "BJAX", the sand barges "A", "B" and "C", and METROPOLITAN SAND & GRAVEL CORPORATION,

Respondents.

(and three related causes)

OBJECTION TO MOTION OF CANADIAN SHIPOWNERS ASSOCIATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Metropolitan Sand & Gravel Corporation, claimant and respondent, objects to the motion made by the Canadian Shipowners Association for leave to file a brief as amicus curiae in support of the petition for a Writ of Certiorari

filed by Deep Sea Tankers, Limited, and Shell Oil Company, Incorporated, in accordance with the provisions of Rule 42 (3) of this Court.

The movant in an attempt to overcome the fact that the motion is not favored by this Court, urges as its reason for filing the brief the following grounds:

> "Petitioners being only a single shipowner and a single charterer respectively, may not be in a position to present adequately to this court the importance of these questions (desirability of uniformity) to the entire shipping industry and to the members of this Association."

This cannot be considered a meritorious or valid ground for the granting of the relief sought by movant, since the proposed brief annexed to the moving papers cites the identical cases contained in Paragraph numbered 4 of the petition and cites no other cases. No new or different argument is presented in the proposed brief. In fact, the proposed brief is nothing short of a restatement of Paragraph numbered 4 of the petition.

The movant makes no showing that petitioners have failed to adequately present the questions of law involved, nor that petitioners will be unable to so present the questions of law.

There is no question that the maritime law of Canada and the maritime law of the United States differ in some respects. This Court has stated that the maritime law applicable in the United States is only so far operative • • • as it is adopted by the laws and usages thereof. *The Lottawanna*, 21 Wall. 558-609, 88 U. S. 21, 32 Law. Ed. 1017.

The United States by statute and usage has developed its own basis for calculation of the liability fund. The proper means by which changes in the doctrine of limited liability should be wrought is to be found in the decision in the case of *Butler* v. *The Boston & Savannah Steamship*

Company, 130 U. S. 527, 32 L. Ed. 1017, 9 Sup. Ct. Rep. 612 (1889), in which the Court stated:

> "The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law. (Citing cases.) In *The Lottawanna* we said: 'It cannot be supposed that the framers of the constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power if no other, to introduce such changes as are likely to be needed'."

Further in said opinion the Court stated:

> "As explained in *The Lottawanna*, maritime law is only so far operative as law in any country as it is adopted by the laws and usage of that country; and this particular rule of the maritime law had never been adopted in this country until it was enacted by statute. Therefore, whilst it is now a part of our maritime law, it is, nevertheless, statute law."

Conclusion.

For the foregoing reasons it is respectfully submitted that the motion for leave to file a brief as amicus curiae should be denied.

Dated: New York, N. Y., November 28, 1958.

Respectfully submitted,

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CHARLES J. CARROLL, JR.,
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